

NO. 48261-4-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

THOMAS JEFFERSON KEYS,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CLARK COUNTY

The Honorable Robert Lewis, Judge

**SUPPLEMENTAL BRIEF OF APPELLANT
(re appellate costs)**

LISA E. TABBUT
Attorney for Appellant
P. O. Box 1319
Winthrop, WA 98862
(509) 996-3959

TABLE OF CONTENTS

	Page
A. SUPPLEMENTAL ASSIGNMENT OF ERROR.....	1
If the state substantially prevails on appeal, any request for appellate costs should be denied.....	1
B. SUPPLEMENTAL ISSUE PERTAINING TO ASSIGNMENT OF ERROR.....	1
Should Mr. Keys have to pay appellate costs if he does not substantially prevail on appeal and the state requests costs?.....	1
C. SUPPLEMENTAL STATEMENT OF THE CASE.....	1
D. SUPPLEMENTAL ARGUMENT.....	1
If the state substantially prevails on appeal, any request for appellate costs should be denied.....	1
E. CONCLUSION.....	2
CERTIFICATE OF SERVICE.....	4

TABLE OF AUTHORITIES

Page

Cases

<i>State v. Blazina</i> , 182 Wn.2d 827, 344 P.3d 680 (2015).....	2
<i>State v. Sinclair</i> , 192 Wn. App. 380, 367 P.3d 612, <i>review denied</i> , 185 Wn.2d 1034 (2016)	1, 2

Statutes

RCW 10.73.160	1
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Other Authorities

RAP 15.2.....	2
Title 14 of the Rules of Appellate Procedure.....	1

A. SUPPLEMENTAL ASSIGNMENT OF ERROR

If the state substantially prevails on appeal, any request for appellate costs should be denied.

B. SUPPLEMENTAL ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Should Mr. Keys have to pay appellate costs if he does not substantially prevail on appeal and the state requests costs?

C. SUPPLEMENTAL STATEMENT OF THE CASE

Supplemental facts are in the Argument section.

D. SUPPLEMENTAL ARGUMENT

If the state substantially prevails on appeal, any request for appellate costs should be denied.

If Mr. Keys does not substantially prevail on appeal, he requests that no costs of appeal be authorized under Title 14 of the Rules of Appellate Procedure. The Court of Appeals has discretion to deny a cost bill even where the state is the substantially prevailing party on appeal. *State v. Sinclair*, 192 Wn. App. 380, 391, 367 P.3d 612, review denied, 185 Wn.2d 1034 (2016); RCW 10.73.160(1) (the “court of appeals . . . may require an adult . . . to pay appellate costs.”). Imposing costs against indigent defendants raises problems well documented in *Blazina*: “increased difficulty in reentering society, the doubtful recoupment of


money by the government, and inequities in administration.” *State v. Blazina*, 182 Wn.2d 827, 835, 344 P.3d 680 (2015). *Sinclair* recognized the concerns expressed in *Blazina* applied to appellate costs and it is appropriate for appellate courts to be mindful of them in exercising discretion. *Sinclair*, 192 Wn. App. at 391.

The trial court found Mr. Keys qualified for indigent defense at trial and on appeal. CP 60-62; Supplemental Designation of Clerk’s Papers, Motion for Order of Indigency (appeal). Importantly, there is a presumption of continued indigency throughout the review process. *Sinclair*, 192 Wn. App. at 393; RAP 15.2(f). As in *Sinclair*, there is no trial court order finding Mr. Keys financial condition has improved or is likely to improve. *Sinclair*, 192 Wn. App. at 393. Mr. Keys is in DOC serving a 486 month sentence. CP 36. Given the serious concerns recognized in *Blazina* and *Sinclair*, this court should soundly exercise its discretion by denying the state’s request for appellate costs in this appeal involving an indigent appellant.

E. CONCLUSION

This court should impose no appellate costs on Mr. Keys if the state substantially prevails on appeal.

Respectfully submitted November 15, 2016.

A handwritten signature in black ink, appearing to read 'LISA E. TABBUT', with a long horizontal flourish extending to the right.

LISA E. TABBUT/WSBA 21344
Attorney for Thomas Jefferson Keys

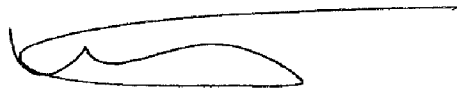
CERTIFICATE OF SERVICE

Lisa E. Tabbut declares as follows:

On today's date, I efiled the Brief of Appellant to (1) Clark County Prosecutor's Office, at prosecutor@clark.wa.gov; (2) the Court of Appeals, Division II; and (3) I mailed it to DOC# 347059, Washington State Penitentiary, 1313 North 13th Avenue, Walla Walla, WA 99362

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed November 15, 2016, in Winthrop, Washington.

A handwritten signature in black ink, appearing to read 'Lisa E. Tabbut', with a long horizontal line extending to the right.

Lisa E. Tabbut, WSBA No. 21344
Attorney for Thomas Jefferson Keys, Appellant

APPENDIX A

Keys 15

9:37

Judge: GREGERSON

STATE OF WASHINGTON
VS.

09/29/2014

PA: CARMENA/OLSON (P)

KEYS, THOMAS JEFFERSON III ✓

DOB: 08/24/73 ✓

Atty: Cannole (P)

Cause# NEW CHARGE

14-1 01979 3

Reporter: CASSETTE

Charge(s): PSP I

Clerk: STEINWAND/SMITH

UNLAWFUL POSSESSION FIREARM-1

P.O.:

ROBBERY I

Bkdt: 09/26/14 Cell: 63-7

Bail: 0.00

CFN: 183640

789

ASSIGNED DEPT # 1 (2) 3 4 5 6 7 8 9 10

Case Reassigned to:

1ST APPEAR ☒ ARRAIGNMENT ☐ CHANGE OF PLEA ☐ SENT ☐ VIOL ☐ REV RELEASE ☐ OMNIBUS ☐ READINESS ☐ OTHR ☐

Defendant Appeared ☒ Yes/No In Custody ☒ Yes/No Warrant Authorized ☐ Warrant Outstanding ☐

Deft Answers to True Name as Charged ☒ Advised of Civil & Constitutional Rights ☒

Probable Cause Found ☐ Probable Cause Not Found ☐

Order for Psych Eval at WSH ☐ sgnd

Attorney

Cannole

☒ Appointed/Retained/ Waived

Personal Recognizance/ Supervised Release ☒ Granted / ☐ Denied / ☐ Release Revoked

Bail \$250,000 With Conditions Set ☒ Return to Court to Be Set/ Previously set. Bail Posted By:

Diversion Referral/ Confirmation ☐ Stay Granted ☐

PV: Admit

Deny

Set Hrg

Next Court Appearance 10-3-14 C Time 9:00 For Arraign ☒ Omnibus ☐ Payment Rev ☐

PV tracking with ☐ Trial in Dept # ☐ Other ☐

NOT GUILTY PLEA/MOTION TO CONTINUE

Information Served on Defendant ☐

Not Guilty Plea Entered ☐

Motion For Continuance of Trial Granted ☐ Denied ☐

Waiver of Speedy Trial Signed ☐

Readiness Hearing Date ☐ RS 1:30PM

Trial Date ☐ [☐]

GUILTY PLEA Original/ Amended

Statement on Plea of Guilty ☐ Sgnd

Psych Evaluation Ordered ☐

Pre-sentence Report Ordered ☐

Dismissal of Counts # ☐

Sentencing Date ☐

SENTENCING

Courts Finds the Defendant:

☐ Guilty as Charged Based on Plea of Guilty

☐ Convicted by the Jury ☐ Court ☐

☐ in violation based on admissions

Defendant is Sentenced to Jail /DOC for ☐ Days/ Months/ Years to be Served as Follows:

CTS ☐ JAIL ☐ WORK RELEASE ☐ WORK CREW ☐ COMM SERV ☐ SSOSA ☐ DOSA ☐

Misdemeanor Sent. ☐ days with ☐ days suspended/ deferred on conditions for ☐ months/ years.

Community Custody ☐ Mos. HIV/ DNA ☐ DNA Fee \$ ☐ Other Costs \$ ☐ DV Penalty \$ ☐

Court Costs \$ ☐ Fine \$ ☐ Drug Fund \$ ☐ Atty Fees \$ ☐ Extdrt \$ ☐ Lab Fee \$ ☐

Restitution \$ ☐ Victim Assess \$ ☐ Deft Served With Map to DOC/COLLECTIONS ☐

Judgment & Sentence Signed ☐ Defendant Fingerprinted Yes/No

Deft is Advised of His/ Her Rights to Appeal ☐ Court Sets Appeal Bond at \$ ☐ NCO Granted / Denied

OMNIBUS

Def Omnibus ☐ Sgnd State's Omnibus ☐ Sgnd

Cut Off date ☐

APPENDIX B

34

FILED

OCT 12 2015

4:45pm

Scott G. Weber, Clerk, Clark Co

THE SUPERIOR COURT FOR CLARK COUNTY, WASHINGTON

State of Washington,

Plaintiff,

and

Thomas Jefferson Keys III,

Defendant.

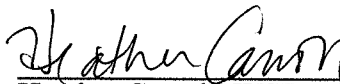
Case Number 14-1-01979-3

**MOTION FOR ORDER OF
INDIGENCY**

I. Motion

Comes now the defendant, Thomas Jefferson Keys III, through his attorney, Heather Carroll, and hereby moves the court for an order of indigency for the purposes of prosecuting an appeal. The motion is based upon the affidavit of income and expenses of the defendant and affidavit of counsel.

Dated October 12, 2015.



Heather Carroll, WSBA #36706
Attorney for Defendant

MOTION FOR ORDER OF INDIGENCY

Law Office of Heather Carroll, PLLC
904 Esther Street, Ste.C, Vancouver, Washington, 98660
Telephone: 360-977-3976 FAX: 360-326-1783

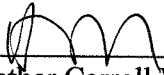
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5 **II. Declaration of Counsel**
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7 I, Heather Carroll, attorney of record in this case, hereby declare under penalty of perjury
8 under the laws of the State of Washington that the following is true and correct to the best of my
9 knowledge.

- 10 1. I am the attorney for the defendant in the above-entitled cause.
11 2. Mr. Keys completed the attached financial affidavit. He has been held in custody
12 continuously since September 26, 2014.

13 SIGNED at Vancouver, WA, this 12th day of October 2015.
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16 Heather Carroll WSBA #36706
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FINANCIAL STATEMENT FOR LEGAL FINANCIAL OBLIGATION DETERMINATIONS

CAUSE NO: 14-1-01979-3

LAST NAME: Keys FIRST NAME: Thomas MIDDLE: Jefferson

Current Address: Clark County Jail APT/SP#: City: ST: ZIP:

Address Prior to Current: transient APT/SP#: City: ST: ZIP:

Marital Status: Married / Divorced / Single Children: # of Legal Dependents:

Age, Education and Work History: 42, G.E.D., Sales, Construction, warehouse

BENEFITS CURRENTLY RECEIVING (check all that apply): If disabled, Nature of disability is: n/a

 Welfare Disability (SSI) Food Stamps V.A. Benefits Worker's Comp **TOTAL AMOUNT** \$ /Month

BENEFITS/CHILD SUPPORT PREVIOUSLY RECEIVED:

 Welfare Disability (SSI) X Food Stamps V.A. Benefits Worker's Comp **TOTAL AMOUNT** \$ 150 /Month

DATE LAST RECEIVED?

 Welfare Disability (SSI) 9/1/14 Food Stamps V.A. Benefits Worker's Comp

HOW LONG HAVE YOU RECEIVED?

 Welfare Disability (SSI) ~6mo. Food Stamps V.A. Benefits Worker's Comp

NET INCOME:

NO Employed? If yes: Employer: City:

Position: Length Employed: Take Home Pay: \$ /MO

N/a Spouse/Reg. Domestic Partner's Employer: Take Home Pay: \$ /MO

X Unemployed – How Long? 9mo prior to coming to custody Unemployment Comp: \$ 0 /MO

OTHER INCOME (List Monthly Amount):

Social Security \$ 0; Pension \$ 0; Child Support \$ 0; Other \$ 0 (Income Type)

TOTAL MONTHLY NET INCOME \$ 0

ASSETS: Do You or Your Spouse Have Any of the Following – CIRCLE ALL THAT YOU HAVE:

- Vehicle(s), RV, Boat – Years and Models: 0

Estimated Value of All: \$ Total Owed: \$

- Home/Land/Bldgs ~ Estimated Total Value: \$ 0 Total Owed: \$

- Checking or Savings Accounts: Total Amount: \$ 0

MONTHLY EXPENSES / DEBTS:

- **LIVING EXPENSES (EVERYTHING** – Rent, Mortgage, Car Payment, Food, Child Care, Etc.) \$ 0 /MO

- **CHILD SUPPORT/SPOUSAL SUPPORT** – ACTUALLY PAYING \$ 0 /MO

- **TOTAL AMOUNT OF OTHER DEBTS** -- Type of Debt court fines \$?

Special Circumstances Affecting Income or Expenses: expect to be sentenced to long prison term

DECLARATION: I declare and certify under penalty of perjury under the laws of the State of Washington that the foregoing information is true and correct.

X Thomas Jefferson
Defendant's Signature

10/2/15
Date

Vancouver, Clark County, WA
Place

APPENDIX C

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FILED

OCT 12 2015

4:45pm
Scott G. Weber, Clerk, Clark Co

THE SUPERIOR COURT FOR CLARK COUNTY, WASHINGTON

State of Washington,

**Plaintiff,
and**

**Thomas Jefferson Keys III,
Defendant.**

Case Number 14-1-01979-3

ORDER OF INDIGENCY

I. Motion

This matter coming on regularly to be heard before the undersigned Judge upon motion of the defendant, and the Court having considered the records and files herein and the affidavits presented to it, and being fully advised in the premises, hereby makes the following findings:

The Court finds that the defendant lacks sufficient funds to prosecute an appeal and applicable law grants a defendant a right to review at public expense to the extent defined in this order;

Further, the Court orders as follows:

1. Defendant is entitled to counsel for review wholly at public expense;
2. Defendant will be appointed counsel for review.
3. Defendant, upon application to the court, is entitled to copies of clerk's papers at public expense and verbatim report of proceedings, and the cost of transmitting exhibits.

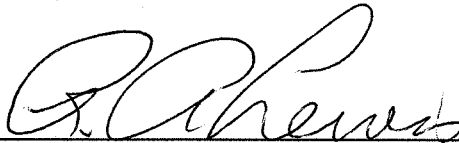
ORDER OF INDIGENCY

Law Office of Heather Carroll, PLLC
904 Esther Street, Ste.C, Vancouver, Washington, 98660
Telephone: 360-977-3976 FAX: 360-326-1783

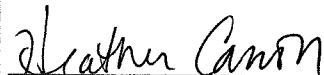
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1 4. Defendant is entitled to reproduction of briefs and other papers on review, which are
2 reproduced by the Clerk of the Appellate Court, at public expense.
3

4 DONE IN OPEN COURT this 17 day of October, 2015.
5

6 
7 _____
8 The Honorable Judge Robert Lewis
9

10
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12 Presented by
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14 
15 _____
16 Heather Carroll WSBA #36706
17 Attorney for the Defendant
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ORDER OF INDIGENCY

Law Office of Heather Carroll, PLLC
904 Esther Street, Ste.C, Vancouver, Washington, 98660
Telephone: 360-977-3976 FAX: 360-326-1783

LISA E TABBUT LAW OFFICE

November 15, 2016 - 11:41 AM

Transmittal Letter

Document Uploaded: 7-482614-Supplemental Appellant's Brief.pdf

Case Name: State v. Thomas Keys

Court of Appeals Case Number: 48261-4

Is this a Personal Restraint Petition? Yes ☐ No

The document being Filed is:

Designation of Clerk's Papers

Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

☒ Brief: Supplemental Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Lisa E Tabbut - Email: ltabbutlaw@gmail.com

A copy of this document has been emailed to the following addresses:

prosecutor@clark.wa.gov